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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,077	08/08/2003	Joseph J. Berke	1549-003	9078

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ALEX RHODES  
UNIT NO. 9  
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EXAMINER

NGUYEN, TUAN N

ART UNIT PAPER NUMBER

3751

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/637,077	<b>Applicant(s)</b> BERKE ET AL.	
	<b>Examiner</b> Tuan N. Nguyen	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/8/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 10, 23 and 31 are objected to because of the following informalities: "said applicator housing" in line 2 of claim 10 lacks antecedent basis in the claim; "ey" in line 1 of claim 23 should be --eye--; and "th" in line 1 of claim 31 should be --the--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 15, 16 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Since "said face mask" in line 1 of claim 15 lacks antecedent basis in the claim, it is unclear as to which structure is being referred to by the limitations subsequent to "said face mask." Furthermore, it is unclear as to what encompasses foreign object in line 2 of claim 31 that can be removed by a magnet.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, 8-12, 14-16, 22, 23, 25-30, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Paterson et al. (hereinafter Paterson).

In regard to claims 1 and 8, Paterson discloses an eye injury treatment station (see Fig. 24) comprising a reservoir (12) for storing an eye washing fluid, the reservoir having a means (see Fig. 20) for developing a pressure in the interior of the reservoir; an eye washing fluid in the interior of the reservoir, the fluid contains water with the addition of eye wash solution (see col. 4, line 42 et seq.), which would inherently include an anti-bacterial agent of claim 8; at least one applicator (192) connected to the reservoir for spraying the eye washing fluid into an injured eye; and a flexible tube (194) for connecting the applicator to the reservoir.

In regard to claims 3 and 4, the means (see Fig. 20) for developing a pressure in the interior of the reservoir comprises a manually operated pump (plunger 156 and valve 158 are within housing 154 that is a part of the reservoir) mounted in the reservoir.

In regard to claim 9, the applicator (192), which is similar to that shown in Fig. 9 of Paterson, is capable of being a face mask for enclosing at least one eye, the face mask (see Fig. 9) having a housing portion (88) for enclosing the eye and a spray nozzle (any nozzle holes 82) in the interior of the housing portion for spraying the eye washing fluid into the eye.

In regard to claim 10, the applicator (see Fig. 24) further comprises a valve (196) in the applicator housing for controlling the discharge of the spray.

In regard to claims 11 and 12, the spray (192) of Paterson can be considered as a spray gun.

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In regard to claim 14, the Paterson station (see Fig. 24) does include two spray applicators (192), the other one could be considered as a second applicator for spraying the eye washing fluid into the eye.

In regard to claims 15 and 16, as best understood, the other nozzle holes (82) of a face mask (see Fig. 9) is considered as a second nozzle portion for spraying the eye washing fluid into a second eye and wherein a second valve (196) in the applicator housing for controlling a discharge of the spray from the second nozzle portion.

In regard to claims 22 and 23, Paterson discloses an eye injury treatment station (see Fig. 24) comprising a reservoir (12) for storing an eye washing fluid under pressure, said tank having a means (see Fig. 20, the hand operated pump 150) for developing said pressure in an interior of said reservoir tank, an eye washing fluid stored in said interior of said tank; a pair of applicators (192) connected to said tank for spraying said eye washing fluid into at least one eye; and a flexible tube (194) for connecting said applicator to said tank.

In regard to claim 25, the Paterson station further comprises a means (196) for controlling a spray of the eye washing fluid from each of the applicators.

In regard to claims 26 and 27, the means (see Fig. 20) for developing a pressure in the interior of the reservoir is a hand operated pump (150) having a valve (158) within housing (154) that is a part of the reservoir.

In regard to claims 28-30, 32 and 33, the method as claimed would be inherent during normal assembly of the use of the Paterson device. Wherein, the medication of

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claim 29 would be the eye washing solution or additives (see col. 4, line 42 et seq. of Paterson).

4. Claims 1-3, 6, 13, 22, 24, 28 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Allman et al. (hereinafter Allman).

In regard to claims 1-3 and 22, Allman discloses a treatment station (see Fig. 1) capable of being used for eye injury treatment, the station comprising a reservoir (36) for storing a washing fluid, the reservoir having a means (electrical pump P or hand pump 5) for developing a pressure in the interior of the reservoir; a washing fluid capable of being used to wash eyes is stored in the interior of the reservoir; at least one applicator (a pair of applicators 54, 46) connected to the reservoir capable of spraying the eye washing fluid into an injured eye; a flexible tube (see col. 3, line 38 et seq.) for connecting the applicator (54) to the reservoir; a cart for transporting the reservoir, the applicator and the flexible tube; and a means for retaining the reservoir to the cart, the cart further has a frame and a pair of wheels (see Fig. 1).

In regard to claims 6 and 24, the Allman station further comprises a cabinet (10) attached to the cart for storing washcloths and hand towels; therefore, it is certainly capable of being used to store eye treatment substances.

In regard to claim 13, the Allman station further comprises a means (32, 34) for collecting and disposing spent eye washing fluid.

In regard to claims 28 and 34, the method as claimed would be inherent during normal assembly of the use of the Allman device.

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5. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Kenney.

In regard to claims 1, 3 and 4, Kenney discloses a treatment station (see Fig. 3) capable of being used for eye injury treatment, the station comprising a reservoir (22) for storing an "eye" washing fluid, the reservoir having a means (manually operated pump 32 that is similar to that of the applicant and therefor would inherently the valve as claimed in claim 4) for developing a pressure in the interior of the reservoir; a washing fluid capable of being used to wash eyes in the interior of the reservoir; at least one applicator (16) connected to the reservoir for spraying the eye washing fluid into an injured eye; and a flexible tube (14) for connecting the applicator to the reservoir.

In regard to claim 5, the Kenney reservoir further comprises a tank and a pressure gauge (44) mounted in the tank.

6. Claims 1, 2, 5 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Flores et al. (herein after Flores).

Flores discloses a treatment station (see Fig. 1) capable of being used for eye injury treatment, the station comprising a reservoir (12) for storing an "eye" washing fluid, the reservoir having a means (64) for developing a pressure in the interior of the reservoir; a washing fluid capable of being used to wash eyes in the interior of the reservoir; at least one applicator (spray gun 60) connected to the reservoir for spraying the eye washing fluid into an injured eye; a flexible tube (62) for connecting the applicator to the reservoir; a cart (see Fig. 1) for transporting the reservoir, the applicator and the flexible tube; and a means (28, 30) for retaining said reservoir to the

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cart, the cart having a frame (14) and a pair of wheels (20). The reservoir further comprises a tank and a pressure gauge (36) mounted in the tank.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flores in view of Sturgis or Dimmick.

Flores teaches all of the claimed limitations except for the use of a chain and padlock as a retaining means. The retaining means of the Flores are belts coupling to the side leg/frame (14) and secured to each other by buckles (30). Attention is direct to the Sturgis reference, which indicates the conventional use of chain and padlock to secure a toolbox to a frame of a vehicle so as to prevent theft (see col. 1, lines 57-61) and the Dimmick reference, which also indicates the common use of chain and padlock as a securing device to prevent theft (see col. 1, lines 23-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace, the Flores retaining means, with a chain and padlock retaining means as, for example, taught by Sturgis or Dimmick in order to prevent unauthorized removal of the reservoir (12) of Flores.

8. Claims 17, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allman in view of Flores.



In regard to claims 17 and 18, Allman discloses the station comprises the reservoir (36), a hand operated pump (55), spraying means (54), the means (32, 34) for collecting, the cart (Fig. 1), and the cabinet (10) as discussed above except for a pressure gauge for displaying a pressure in the water tank (36). Attention is directed to the Flores reference, which discloses an analogous mobile station as discussed above, wherein the water tank has a pressure gauge (36) for indicating the pressure within the water tank. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Allman device, a pressure gauge as, for example, taught by Flores in order to provide an indication of pressure within the Allman supply tank.

In regard to claim 21, the Allman collecting means comprises a basin (32) attached to the cart for collecting the fluid; a pail (60) for receiving fluid from the basin; and a flexible tube (58) attached to an outlet portion of the basin for directing the fluid into the pail (see Fig. 4 of Allman).

9. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allman in view of Flores as applied to claim 17 above, and further in view of Tanner et al. (hereinafter Tanner).

Although the Allman spraying means is just a spray gun unit (54) capable of spraying fluid into the eye and does not include a mask for enclosing the eye as claimed, attention is directed to the Tanner reference, which discloses an emergency spraying unit (see Fig. 4) for mounting onto a vehicle. The unit having a spray gun (94) and a mask (76 or 78) with spraying nozzle portion therein capable of enclosing an eye

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for spraying fluid into the eye. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the single spray gun unit (54) of the Allman device with a multiple sprays unit as, for example, taught by Tanner in order to allow better flexibility for washing the user face or eyes.

10. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allman in view of Ness.

As best understood, the Ness magnetic ophthalmic instrument is obviously capable of being store within the Allman cabinet (10) and is obviously capable of being used in the claimed manner.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Slonim discloses an emergency eye kit. Van Kammen discloses a wheeled eye wash station. Greenwood discloses an emergency cart with cabinet. DeMotte and Baumann disclose eyes faucet structure. Nance discloses a cart and fluid tank with a spray. Daniels, Hildreth, and Dr. David Bintcliffe disclose movable basin and collecting container. Immler discloses a chain and padlock retaining means.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 703-306-9046. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tuan N. Nguyen  
Primary Examiner  
Art Unit 3751  
7/7/04

TN